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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ANTONIO MUSNI,)
)
Defendant.)
)

No. CR 07-0385 MMC

**UNITED STATES' SENTENCING
MEMORANDUM**

I. Introduction

The defendant pled guilty to counts one (1) through six (6) of the indictment charging him with bank fraud, in violation of 18 U.S.C. § 1344. The Probation Department ("Probation") calculates the defendant's Guidelines as a total offense level of 13, criminal history category I, and corresponding sentencing range of 12-18 months. Probation recommends a prison sentence of 12 months along with various other terms. The government disagrees with Probation's recommended prison sentence, but otherwise concurs with the presentence investigation report (PSR). Accordingly, for the reasons set forth herein, the government respectfully requests that

1 the Court sentence the defendant to serve fifteen (15)¹ months in prison along with the other
2 sentencing recommendations in the PSR and one additional supervised release condition
3 discussed below.

4 **II. Facts**

5 The Court is well aware of the facts by virtue of the defendant's guilty plea and PSR, so
6 only a brief summary is required here. On April 1, 2006, the defendant was living at 851 Church
7 Street in San Francisco and working at the University of California, San Francisco ("UCSF").
8 While living at that address, the defendant received various credit card applications and loan
9 applications addressed to Stephen Chiari. He fraudulently filled out applications for five credit
10 cards and two automatic \$5,000 loans in Chiari's name and thereafter used the credit cards and
11 loan proceeds for his own personal benefit. Prior to submitting the fraudulent applications, the
12 defendant also accessed Chiari's medical records at UCSF to obtain his confidential and personal
13 information. Beginning in April 2006 and continuing through February 28, 2007, the defendant
14 made numerous fraudulent personal charges on each of the credit cards and fraudulently cashed
15 both of the \$5,000 loan checks from HSBC. The total loss from the defendant's 10-month crime
16 spree was \$54,185.69.

17 As the Court knows from Mr. Chiari's victim impact statement, the defendant's actions
18 caused a considerable hardship on Mr. Chiari. He spent at least 80 extremely frustrating hours of
19 his time straightening out and undoing what the defendant did to Mr. Chiari's credit.
20 Nevertheless, he has graciously eschewed seeking restitution for that time and placed his trust in
21 the Court to impose a just sentence.

22 **III. Proposed Sentence**

23 The government requests that the Court sentence the defendant to 15 months in prison
24 along with the other conditions enumerated in the PSR. A 15-month sentence is squarely in the
25 middle of the applicable Guideline range and is entirely appropriate and fair pursuant to the
26

27 ¹ In order to reach fifteen months, the government recommends the Court sentence the defendant
28 to five (5) months on each count with counts 1 through 3 to run consecutively and counts 4 through 6 to
run concurrently with count 3.

Guidelines and 18 U.S.C. § 3553. While the defendant is a first time offender here, there are several aggravating factors related to the offenses that justify a mid-range sentence:

- the defendant opened five separate credit card accounts and took out two loans in the victim's name, i.e. this was not an isolated or one time event;
- the defendant significantly abused a position of trust at UCSF by illegally accessing patient information for purposes of committing identity theft;
- there was a significant loss amount of more than \$50,000.00;
- the defendant used the stolen money for personal luxury items and expenses;
- the defendant's conduct had a significantly negative impact on the victim;
- the defendant's scheme spanned a 10-month period and was apparently thwarted by the victim's own investigation versus the defendant voluntarily ending the conduct; and
- the government has agreed to dismiss Count 8 in the indictment, a violation of 18 U.S.C. § 1028A(a)(1) – aggravated identity theft, which carries a mandatory 2-year consecutive sentence to whatever the defendant receives on the other counts, thus the defendant has already received significant consideration in the form of a much lower sentence.

Applying the factors in 18 U.S.C. § 3553(a) to this case leads to the conclusion that a 15-month sentence is reasonable: (1) the nature and circumstances of the offense are that it was a serious offense that impacted the victim in a significant manner, it was a severe abuse of trust with UCSF, it involved a large sum of money; (2) a mid-range sentence of 15 months will reflect the seriousness of the offense, promote respect for the law, and provide just punishment; and (3) the proposed sentence will deter future criminal conduct by the defendant and others.

Further, in addition to the conditions of supervised release set forth in the PSR, the government respectfully requests that the Court require the defendant to notify any prospective employer of these convictions if the prospective employment will involve having access to customer/patient personal information or any control over any aspect of the employer's finances.

The defendant could be relieved of the aforementioned condition only with Probation Officer or

1 Court approval.

2 Finally, the government provides the Court with the following specific victims and
3 addresses for purposes of restitution:

- 4 1. \$8,131.03 to Bank of America Restitution, PO Box 15730, Wilmington ,
5 Delaware 19885;
- 6 2. \$7,514.51 to Discover Financial Services, PO Box 15048, Wilmington,
7 Delaware 19850;
- 8 3. \$652.00 to HSBC Fraud, PO Box 80055, Salinas, CA 93912-0055;
- 9 4. \$10,000.00 to HSBC Fraud Investigations, 26525 North Riverwoods
10 Boulevard, Mettawa, Illinois 60045, Attn: Chris Bohn;
- 11 5. \$11,892.74 to American Express, 888 South Figueroa Street, Los Angeles,
12 CA 90017; and
- 13 6. \$15,995.41 to Chase Correspondence, PO Box 15298, Wilmington, Delaware
14 19850.

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16 DATED: June 18, 2008

Respectfully submitted,

17 JOSEPH P. RUSSONIELLO
18 United States Attorney

19 /s/
20 JEFFREY R. FINIGAN
21 Assistant United States Attorney
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